

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-1986

United States of America,

Appellee,

v.

Jose Hernandez-Nuno,

Appellant.

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Appeal from the United States
District Court for the Southern
District of Iowa.

[UNPUBLISHED]

Submitted: December 17, 2004

Filed: December 27, 2004

Before MURPHY, FAGG, and SMITH, Circuit Judges.

PER CURIAM.

Jose Hernandez-Nuno (Hernandez) appeals the sentence the district court^{*} imposed after Hernandez pleaded guilty to illegal reentry. His counsel has moved to withdraw and filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing the district court committed plain error when the court failed to comply with Federal Rule of Criminal Procedure 11(b)(1)(I) and (M) in taking Hernandez's guilty plea. Hernandez has filed a supplemental brief, arguing he pleaded guilty only because he

^{*}The Honorable Ronald E. Longstaff, Chief Judge, United States District Court for the Southern District of Iowa.

believed the district court would order his federal sentence to run concurrently with his state sentence, and defense counsel was ineffective.

These arguments fail. The district court did not commit plain error in taking Hernandez's guilty plea because, even if the court did not strictly comply with Rule 11, Hernandez failed to show his substantial rights were affected. See United States v. Dominguez Benitez, 124 S. Ct. 2333, 2340 (2004); United States v. Vonn, 535 U.S. 55, 58-59 (2002). Further, the district court structured Hernandez's federal sentence to run concurrently with his state sentence, and Hernandez's ineffective-assistance claims are not properly before us. See United States v. Hughes, 330 F.3d 1068, 1069 (8th Cir. 2003). Upon our independent review under Penson v. Ohio, 488 U.S. 75, 80 (1988), we find no nonfrivolous issues. Thus, we grant counsel's motion to withdraw, and we affirm.
